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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/905,777	07/13/2001	James Chen	25886-0057	5768	
24961	7590 06/01/2004		EXAMINER		
HELLER EHRMAN WHITE & MCAULIFFE LLP 4350 LA JOLLA VILLAGE DRIVE 7TH FLOOR SAN DIEGO, CA 92122-1246			KWON, BRIA	KWON, BRIAN YONG S	
			ART UNIT	PAPER NUMBER	
			1614		
			DATE MAILED: 06/01/2004	4	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)			
Office Action Summary		09/905,777	CHEN, JAMES			
		Examiner	Art Unit			
		Brian S Kwon	1614			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
THE - External afternal afte	ORTENED STATUTORY PERIOD FOR REPL MAILING DATE OF THIS COMMUNICATION. In sions of time may be available under the provisions of 37 CFR 1. SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a represent of the reply is specified above, the maximum statutory period reto reply within the set or extended period for reply will, by statutely received by the Office later than three months after the mailing patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be ti oly within the statutory minimum of thirty (30) da will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDON	imely filed ys will be considered timely. In the mailing date of this communication. ED (35 U.S.C. § 133).			
Status						
1)⊠	Responsive to communication(s) filed on <u>13 July 2001</u> .					
2a) <u></u> ☐	This action is FINAL . 2b) This	s action is non-final.				
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims						
4) ☐ Claim(s) 1-24 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) 1-24 are subject to restriction and/or election requirement.						
Application Papers						
9) The specification is objected to by the Examiner.						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachmen	· ·					
	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summar Paper No(s)/Mail D				
3) Infon	r No(s)/Mail Date		Patent Application (PTO-152)			

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DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a process of destroying or impairing target cells.
 - II. Claims 22-24, drawn to an apparatus for transcutaneous photodynamic therapy of a lesion.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, for example a process of modulating immune-response (US 6008241); a process of measuring optical information (US 5477051); and a dental and industrial photocuring process (US 5634711).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

- 2. If applicant elects Group I invention, it is subject to further restriction as followings.
 - I(a). Claims 1, 3-14, 17-21, drawn to a process of destroying or impairing target cells, comprising administering to a subject a photosensitizing agent.
 - I(b). Claims 2-21, drawn to a process of destroying or impairing target cells,

 comprising administering to a subject a first conjugate comprising a first member

 of a ligand-receptor binding pair conjugated to an antibody or antibody fragment,

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and a second conjugate comprising a second member of the ligand-receptor binding pair conjugated to a photosensitizing agent or photosensitizing agent delivery system or prodrug.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, they have different modes of operation. One practicing the invention of any of the above groups would not necessarily be required to practice any of the others. Further a reference which anticipates the invention of one of the above groups would neither anticipate or make obvious any of the other inventions. The search for above inventions would not be co-extensive, particularly as to the literature search required. Clearly each of the above inventions is capable of supporting it's own patent.

Because these inventions are distinct for the reasons given above and the search required for Group I(a) is not required for Group I(b), restriction for examination purposes as indicated is proper.

- 3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
- 4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (571) 272-0581. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (571) 273-0584. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Brian Kwon
Patent Examiner
AU 1614